

FILED

JUL 23 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LESTER E. PATRICK,

No. C 05-03280 MHP

Plaintiff,

**ORDER**

v.  
R. JAMES NICHOLSON, Secretary,  
Department of Veterans Affairs

**Re: Leave to File Motion for  
Reconsideration; Extension of Time to File  
Ninth Circuit Appeal**

Defendant.

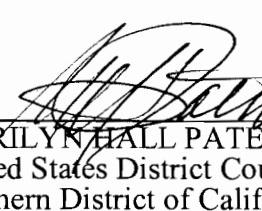
On July 14, 2008 plaintiff Lester Patrick requested leave to file a motion for reconsideration of the court's order dated May 16, 2008, which granted defendant's motion for summary judgment. See Docket No. 75. Plaintiff claims that the Supreme Court's recent decision in CBOCS West, Inc. v. Humphrey, issued May 27, 2008, has changed the legal landscape such that a reconsideration of this action is warranted. Plaintiff also contends the court clearly failed to consider material facts or key legal arguments in its May 16, 2008 order. Neither argument is persuasive. Consequently, plaintiff's request for leave to file a motion for reconsideration is DENIED.

In the alternative, plaintiff seeks an extension of the time limit within which to file an appeal of this court's decision with the Ninth Circuit Court of Appeals. Plaintiff, however, has not demonstrated excusable neglect or good cause as required by Federal Rule of Appellate Procedure 4(a)(5), the rule that sanctions such extensions. Consequently, plaintiff's motion for the extension is DENIED. If plaintiff chooses, he may present his extension request to the Ninth Circuit directly.

IT IS SO ORDERED.

Dated:

July 22, 2008

  
MARILYN HALL PATEL  
United States District Court Judge  
Northern District of California